system. They are to be regarded as additional salary allowances to public servants and are not forbidden by the constitutional prohibition against donations of state money to individuals.

War Problems. *Conscription Act—Constitutionality.* United States v. Sugar (U. S. District Court, July 10, 1917, 243 Fed. 423); Story v. Perkins (U. S. District Court, August 20, 1917, 243 Fed. 997). These cases uphold the constitutionality of the conscription act. In the case of United States v. Sugar the court considers and disposes of a rather wide range of attacks upon the validity of the law. In the first place conscription does not subject the drafted man to "involuntary servitude." The thirteenth amendment is aimed at enforced labor between individuals and does not forbid the compelling of public service to the state. It is useless to urge, in the second place, that the exemptions provided for by the act make it class legislation since there is no constitutional prohibition against class legislation by the national government. Third, it is unnecessary that any appeal should lie to the civil courts of the United States from the decisions of the draft exemption boards since those boards are military courts and the authority to organize them comes from the grant of congressional power over the army and navy rather than from the judicial article of the Constitution. Fourth, the statute does not confer legislative and judicial power on the President but merely empowers him to fill in the details of a law already complete in order to make it practically effective. In the fifth place, the conscription act did not involve an exercise of power not granted to congress by the Constitution since it establishes compulsory military service, inasmuch as conscription is a reasonable means of exercising the specifically delegated power to raise and support armies. Finally, the act does not contravene the clause of the Constitution allowing congress to call forth the militia "to execute the laws of the union, suppress insurrections, and repel invasions." It does not call forth the militia but instead it drafts the members into the national army and discharges them from the militia. This the national government has a right to do despite the previous membership of the drafted men in the national guard.

The opinion of the case of Story v. Perkins touches briefly upon the first and last points just mentioned and in addition considers the objection that the conscription act deprives a person of his common law right to remain within the realm. It is pointed out that an act of congress cannot be declared void because it is inimical to the common

law since the only limits upon congressional authority are to be found in the Constitution. The Constitution gives congress the right to raise and support armies and that power is plenary.

On January 7, 1918, the United States Supreme Court handed down a unanimous decision upholding the selective conscription law.

Draft Exemption Boards—Habeas Corpus to Review Decision of. United States v. Heyburn (U. S. District Court, October 13, 1917, 245 Fed. 360). The civil courts will not interfere with the findings of a lawful military tribunal by issuing a writ of habeas corpus unless it is clear that there has been "want of jurisdiction, usurpation of power, or arbitrary denial of rights." The draft exemption boards have been created for the purpose of deciding important questions of fact relating to the administration of the conscription act. They possess independent jurisdiction. The writ of habeas corpus cannot be made a substitute for a writ of error. The fact of citizenship here disputed is a fact which can be determined as well by the exemption board as by any other tribunal and there is no reason why the court should exercise in regard to that question an appellate jurisdiction which has not been conferred upon it.

Enemy Aliens—Their Right to Sue. Speidel v. N. Barstow Co. (U. S. District Court, July 27, 1917, 243 Fed. 621); Rothbarth v. Herzfeld (N. Y. Sup. Ct. App. Div., November 9, 1917, 167 N. Y. Supp. 199); Taylor v. Albion Lumber Co. (California, October 19, 1917, 168 Pac. 348). These cases are alike in holding that when the plaintiff in litigation begun before the outbreak of war becomes an enemy alien the case should be suspended until the close of the war but not dismissed. In Speidel v. N. Barstow Co. the plaintiffs were four partners, two of them enemy aliens residing in Germany and two enemy aliens living in this country. The action was for the infringement of a patent. The court does not decide whether the resident enemy aliens would have the right alone to prosecute the suit. The monopoly granted by a patent is not divisible into parts and to suspend the suit for two of the plaintiffs while allowing the other two to proceed would subject the defendant to two suits, one now and one at the close of the war. Accordingly the suit as a whole, affecting all the plaintiffs, is suspended during the war. In the case of Rothbarth v. Herzfeld it is pointed out that it is unnecessary to have a trial on the special issue of the alien enemy character of the plaintiff in an

action. The court is at liberty summarily to suspend the case as soon as it becomes convinced that the plaintiff is an alien enemy. In Taylor v. Albion Lumber Co. an enemy alien was plaintiff in error in action for damages and before the outbreak of war had secured a reversal of the judgment of the court below and an order for new trial. To dismiss the suit outright on the ground of the alien enemy character of the plaintiff would be in effect an affirmance of a judgment already declared by the appellate court to be erroneous. The case was accordingly suspended for the period of the war.

Enemy Aliens—As Shareholders in Domestic Corporation. Fritz Schulz, Jr., Co. v. Raimes and Co. (New York, Supreme Court, July 19, 1917, 166 N. Y. Supp. 567). The plaintiff is a New Jersey corporation. It has fifty shares of stock, forty-seven of which are owned by enemy aliens resident in Germany. Three of the four directors are either American citizens or have taken out first papers to become such. The case involves the right of this corporation to sue in an American court during the war. After a careful examination of authorities the court decides that the courts of this country have almost unanimously regarded a corporation as an entity separate and apart from the incorporators. If all the shareholders and officers of the corporation were enemy aliens resident abroad it would doubtless be impossible for it to continue to act as a corporation or distribute profits, but so long as the directors and manager are resident in this country and able to control its affairs there is no ground upon which the plaintiff corporation can be denied its right of access to the courts.

Home Defense Guards—Right to Incorporate. In re Proposed Incorporation of Long Beach Defense Guards (New York, Supreme Court, July 16, 1917, 166 N. Y. Supp. 459). This case denies the right of the so-called home defense guards to incorporate under the New York statutes. First, a membership corporation may not be formed for any purpose for which a corporation may be created under any other general law. The home defense guards, as part of the reserve militia of the state, are subject to organization and regulation as the governor of the state may direct. Second, there is a provision of the military law of the state forbidding any body of men with enumerated exceptions from "associating themselves together as a military company or organization." Finally, the military law forbids the incorporation of any body of men under a name which would mislead persons into be-

lieving that such corporation is connected with the national guard or naval militia. The name of the proposed corporation is held to be thus misleading.

Seditious Publications—Exclusion from Mails. Masses Publishing Co. v. Patten (U. S. District Court, July 24, 1917, 244 Fed. 535; *also* U. S. Circuit Court of Appeals, August 6, 1917, 245 Fed. 102); Jeffersonian Publishing Co. v. West (U. S. District Court, August 29, 1917, 245 Fed. 585). These cases involve the right of the postal authorities to exclude from the mails under the provisions of the Espionage Act certain publications alleged to be within the prohibitions of that law. The district court in the Masses Publishing Co. v. Patten case decided that the periodical in question was not in the non-mailable class. It pointed out that the question raised was not what congress might do in the way of establishing a press censorship but what it had actually done. The Espionage Act allows the exclusion from the mails of matter containing false statements for the purpose of interfering with the military success of the United States, statements which will cause insubordination, disloyalty or mutiny, or which wilfully obstruct recruiting or enlistment. The cartoons and articles which the government objected to could not be called false since they were in the nature of expressions of opinion. There was, furthermore, no direct incitement to insubordination, disloyalty, or resistance to the draft or any direct effort to obstruct enlistment. It is direct incitement which the law condemns and not indirect. On this theory articles which expressed admiration of those who were in prison for resisting conscription were held not to be in violation of the law since there is a difference between voicing esteem and advising emulation. The circuit court of appeals, however, in reviewing the case, did not take this view. It pointed out that "it is at least arguable whether there can be any more direct incitement to action than to hold up to admiration those who do act," and concluded that indirect incitement to disloyalty or resistance was clearly within the prohibition of the statute. It further declared that there was a strong presumption in favor of the correctness of the interpretation placed upon the law by the postmaster general and in the present case there was not sufficiently clear ground for overruling him. In Jeffersonian Publishing Co. v. West the action of the postal authorities was upheld in a somewhat fervid opinion presenting no unique features.